



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 CHURCH STREET
L & C ANNEX 6TH FLOOR
NASHVILLE TN 37243-1534

March 26, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7007 1490 0001 3609 3929

CT Corporation System
800 South Gay Street
Suite 2021
Knoxville, Tennessee 37929

Subject: DIRECTOR'S ORDER NO. WPC08-0060
AGC FLAT GLASS NORTH AMERICA, INC.
SULLIVAN COUNTY, TENNESSEE

To whom it may concern:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact me at (615) 532-0670.

Sincerely,

Patrick Parker
Manager, Enforcement and Compliance Section

cc: DWPC-EFOJC-BBC
DWPC-NCO-MTS
DWPC-NCO-E&C

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
AGC FLAT GLASS)	
NORTH AMERICA, INC.)	
(formerly AFG INDUSTRIES, INC.))	
)	
)	
)	
RESPONDENT)	CASE NO. WPC08-0060

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the “division”) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

II.

AGC Flat Glass North America, Inc. (hereinafter the “Respondent”) is an active corporation authorized to conduct business in the State of Tennessee. Service of process may be made on the Respondent through its registered agent, CT Corporation System, at 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (“Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined at T.C.A. §69-3-103(20), and as hereinafter stated, the Respondent has violated the Act.

V.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely

that the discharged substance will move into waters of the state. Rule 1200-4-5-.08 states in part that a set of effluent limitations will be required in each permit that will indicate adequate operation or performance of treatment units used and that appropriately limit those harmful parameters present in the wastewater. Furthermore, it is unlawful for any person to increase the volume or strength of any wastes in excess of the permissive discharges specified under any existing permit.

VI.

Madd Branch and the South Fork of the Holston River are referred to herein as “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters, et al,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, Madd Branch and the South Fork of the Holston River have been classified for the following uses: fish and aquatic life, livestock watering and wildlife, recreation, and irrigation. Further, the South Fork of the Holston River has also been classified as an industrial water supply. Additionally, Madd Branch is considered an impaired water body for physical substrate habitat alterations due to discharges from municipal separate storm sewer system (MS4) area and channelization.

FACTS

VII.

The Respondent operates an industrial facility located in Sullivan County at 1450 Lincoln Street, Kingsport, Tennessee 37662 (hereinafter the “site”), and is the holder of an individual NPDES Permit, TN0003905 (hereinafter the “permit”). The permit became effective on November 1, 2004, and expires on November 30, 2008. The facility engages in the manufacturing, casting, and edging of glass. The facility is authorized to discharge stormwater, glass washing wastewater, glass edger wastewater, and non-contact cooling water through Outfall 001 to the South Fork of the Holston River, and stormwater, glass washing wastewater, and filter backwash through Outfall 002 to Madd Branch to the South Fork of the Holston River. The permit establishes effluent limits, requires discharge monitoring and reporting, and requires submittal of discharge monitoring reports (DMRs).

VIII.

During the monitoring period of October 2006 through January 2008, the Respondent reported exceedances of the following NPDES permit parameters, which resulted in significant noncompliance of established permit limits:

Monitoring Period	Violation Description
October 2006	3 violations of TSS
November 2006	2 violations of TSS
December 2006	TSS
January 2007	4 violations of TSS
February 2007	4 violations of TSS
March 2007	2 violations of Total Suspended Solids (TSS)
April 2007	TSS
August 2007	Total Residual Chlorine and 2 violations of TSS
September 2007	Total Residual Chlorine and 2 violations of TSS
October 2007	2 violations of TSS
November 2007	2 violations of TSS
December 2007	2 violations of TSS
January 2008	2 violations of TSS

IX.

The division issued a NOV to the Respondent on April 17, 2007, for effluent violations reported during the monitoring period of October 2006 through February 2007.

X.

On May 10, 2007, the division conducted a Compliance Review Meeting (CRM) with the Respondent to discuss current operations and compliance issues occurring at the site. As a result of the CRM, the Respondent agreed to submit a NPDES permit application for modification that accurately describes the processes and operations occurring at the site.

XI.

On June 27, 2007, the division received an incomplete NPDES permit application for modification from the Respondent.

XII.

On August 6, 2007, the division responded to the June 27, 2007, NPDES permit application, and notifying the Respondent that the permit application was deemed incomplete. The division provided comments to the Respondent, and requested that additional information be submitted to complete the NPDES permit application process.

XIII.

To date, the division has not received any additional information requested in the August 6, 2007, correspondence.

VIOLATIONS

XIV.

By failing to comply with the terms and conditions of its permit, the Respondent has violated T.C.A. §§69-3-108(b)(3) and 69-3-114(a), which state, in part:

T.C.A. §69-3-108:

- (b) It shall be unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:
 - (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

T.C.A. §69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, by May 31, 2008, submit a complete NPDES permit application which accurately reflects current operations and treatment processes occurring at the site. The completed NPDES permit application shall be submitted to the division's Permit Section located at 401 Church Street, L&C Annex, 6th Floor, Nashville, Tennessee 37243. A copy shall also be submitted to the manager of the division's Johnson City Environmental Field Office (JC-EFO) located at 2305 Silverdale Road, Johnson City, Tennessee 37601.
2. The Respondent shall, within FIFTEEN (15) DAYS of receipt of this Order, submit a corrective action plan (CAP) to comply with effluent limitations prescribed in the subject permit. The plan shall include, but not be limited to,

specific measures necessary to address the effluent violations, and a schedule of implementation for the proposed activities. The plan shall be submitted to the manager of the division's JC-EFO located at the address referenced in Item 1 above. The Respondent shall also submit a copy to the manager of the division's Enforcement and Compliance Section located at 401 Church Street, L&C Annex-6th Floor, Nashville, Tennessee 37243.

3. The Respondent shall, within SIXTY (60) DAYS of receipt of this Order, complete the activities outlined in the CAP and provide written notification of completion to the manager of the JC-EFO, and a copy to the manager of the division's Enforcement and Compliance Section located at the addresses referenced above.
4. The Respondent is hereby assessed a CIVIL PENALTY in the amount of FIFTEEN THOUSAND DOLLARS (\$15,500.00), payable as follows:
 - a. The Respondent shall pay a CIVIL PENALTY of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00) to the division within THIRTY (30) DAYS of receipt of the Order and Assessment.
 - b. The Respondent shall pay a CIVIL PENALTY of SEVEN THOUSAND DOLLARS (\$7,000.00) to the division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
 - c. The Respondent shall pay a CIVIL PENALTY of ONE THOUSAND DOLLARS (\$1,000.00) to the division within THIRTY (30) DAYS of

default if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.

d. The Respondent shall pay a CIVIL PENALTY of FOUR THOUSAND DOLLARS (\$4,000.00) to the division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.

5. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future. The director may, for good cause shown by the Respondent, extend for a fixed time period, the compliance dates contained within this Order.

To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay. The director will reply to the Respondent's request in writing. Should the Respondent fail to meet the requirement by the extended date, any associated CIVIL PENALTY shall become due 30 days thereafter.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 26th day of March 2008.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69- 3-109 and 69 – 3-115, allow the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file a written petition setting forth each Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The written petition should be sent to the Department's Office of General Counsel, located at 401 Church Street, L&C Tower 20th Floor, Nashville, Tennessee 37243.

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69- 3 -109 and 69 –3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301

et seq. (the Uniform Administrative Procedures Act.) and the Dept. of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low- income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Water Pollution Control-Enforcement & Compliance Section, Tennessee Department of Environment and Conservation, 6th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, at the address above. Please write your case number on all payments and all correspondence concerning this matter.